

EXHIBIT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 14-24009-CIV-JLK

DUNN, ET AL.,

Plaintiffs,
vs.

MIAMI, FLORIDA

DECEMBER 8, 2014

TAKATA CORPORATION, ET AL.,

Defendants.

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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Thank you. Be seated, please.

All right. We have scheduled this afternoon a joint hearing of the combined two motions: One is a motion for expedited discovery filed by the Plaintiffs; one is -- or the other issue involves a motion for a stay pending consideration by the Judicial Panel Multidistrict Litigation. The second motion is filed by several different parties. There are several motions, but basically, those seem to be the two thrusts of the hearing for this afternoon.

Now, looking out over the courtroom, I don't know, I'm just guessing we've got 30, 40 lawyers here.

And, Joyce, I don't know whether -- did you do -- we did the first time we were here --

THE COURTROOM DEPUTY: Yes, I did.

THE COURT: -- pass the notebook and say --

THE COURTROOM DEPUTY: Yes.

THE COURT: You did that?

THE COURTROOM DEPUTY: Yes.

THE COURT: I would like everybody to, you know, be recorded as being here for the hearing, but rather than just having you stand up and announce your appearances, if you will kindly, as Joyce has indicated, pass around the list and everybody sign it. Then the court reporter will put it all into the record. We have done that on another substantial

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1 case of several years ago, and it worked very well.

2 All right. Then it would be my suggestion, the most
3 expeditious way to handle this would be to start with the
4 Defendants' motion for stay rather than the motion for
5 expedited discovery. We can -- I can hear from you. You can
6 argue and all of that, but I think that might be the best way
7 to start, and we ultimately will get to all of this.

8 I see Mr. Prieto back there who is here, and for the
9 other --

10 Well, Mr. Prieto, do you have any objection -- your
11 motion may have been filed first, but do you have any problem
12 with taking the motion of the defendants regarding MDL
13 consideration first?

14 MR. PRIETO: No, Your Honor. It's a pretty
15 reasonable way to approach this.

16 THE COURT: Okay. All right. Now then, we will
17 turn to the defendants and -- please, yes.

18 MR. BERNICK: Good afternoon, Your Honor. My name
19 is David Bernick, and I represent Takata and the Takata
20 entities here today. I don't know if Your Honor would like me
21 to introduce other people who are here for Takata or just to
22 wait the list, but I'm more than happy to do so.

23 THE COURT: Whichever is -- announce the appearances
24 on behalf of your client -- are you going to be doing -- are
25 some of the others going to be speaking and joining in your

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1 motion, or do you know yet?

2 MR. BERNICK: I know that I will be speaking, and I
3 believe that the automakers will probably be addressing the
4 Court as well. Not individually, I suspect, but perhaps as a
5 group with Judge Scott. I don't know exactly what the details
6 are.

7 THE COURT: All right. Well, why -- we will get
8 everybody on the list, but those that speak will announce, and
9 announce their firm and who they represent as Mr. Bernick has
10 just done.

11 If you kindly step to the podium.

12 MR. BERNICK: Sure.

13 THE COURT: I'll be glad to hear from you.

14 MR. BERNICK: Good afternoon, Your Honor.

15 In these cases, we have so many lawyers, and there
16 are so many other lawyers who are not present here today but
17 who are actively involved in these matters that maybe it would
18 be hopeful, at least, to start out with some areas where we
19 believe that there is agreement and go from there to the
20 points of disagreement.

21 And I have four points where I think that there is,
22 in fact, agreement. One is that this litigation concerns
23 events that have created a very significant public safety
24 issue. There is no question about that whatsoever.

25 In anticipation, indeed reflecting that issue, when

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1 in early this year, in January, my client met with the NHTSA
2 Organization -- that is the National Highway Transportation
3 Safety Agency -- which has, as you know, responsibility on
4 behalf of the government for assuring safety on our highways.
5 So a meeting took place in January; a further report was made
6 in May; and since that time, there has been a very regular and
7 growingly intensive line of communication between the Takata
8 companies and NHTSA concerning this very issue.

9 Many more things have been done, and I'll touch on
10 them in a moment, but the plaintiffs need not worry or concern
11 themselves that somehow the Court has to resolve or is being
12 asked to resolve whether there is a safety issue because we
13 agree that there is one.

14 The question presented I believe here today, Your
15 Honor, is where, that is in this case; when; what time, if at
16 all, should this issue actually be resolved; is this the case;
17 and is this the time to deal with that public safety issue.

18 And this brings me to the second point where I
19 believe that there is agreement. It relates to what this case
20 is about. This case is about diminution in value. This is a
21 class action on behalf of people who claim that their
22 automobiles have diminished value because of the issue that
23 relates to the inflator.

24 And Mr. Prieto, at the hearing that took place a few
25 weeks ago, was candid in acknowledging that that was the

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1 nature of this case. Those kinds of cases, cases that deal
2 with diminution in value class actions have become very common
3 over the years, and this falls right into that same pattern.

4 And indeed there are, as Your Honor is well aware
5 from the briefs, many, many more cases that differ in certain
6 respects from this one; but the gravamen is the same, they are
7 class actions that seek loss of value, diminution of value.

8 There are now 57 of those cases, by current count,
9 all over the country. They tend to be in pockets. There are
10 several of them that are here in the Southern District of
11 Florida; others in the Middle District of Florida; they're in
12 California; they're in Pennsylvania; they're in Detroit;
13 they're in New York; they're in North Carolina. I could go
14 on. They're all over the place except the far West may not be
15 all that well represented, but they're certainly all over the
16 country.

17 This case is a diminution of value case. I don't
18 think there is any issue about that, but there is some
19 language in the complaint that asks for equitable relief, and
20 so I want to turn to that for my third point of agreement.

21 The third point of agreement is that in this case
22 that seeks diminution of value, there is today no request for
23 a preliminary injunction, none. This case has been pending
24 now for five weeks. No such request has been made. That's
25 not for want of information we would suggest to the Court.

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1 This particular controversy has been in the papers two to
2 three times a week. There have been congressional hearings
3 highly publicized. There have been a series of announcements
4 by NHTSA concerning this controversy. And if you take a look
5 at the complaint itself in this case, Your Honor, you will see
6 that it is chock full of information, all kinds of
7 information; information historically about recalls and
8 ruptures, information about current developments. Every brief
9 that is filed by the plaintiffs, properly so, updates the
10 Court with further information that relates to this
11 controversy. So for all of that information, an extremely
12 well-informed case.

13 They knew who the defendants are. They know what
14 the issue is. They know specifics about the issue. They get
15 really, in a sense, an up-to-date view of exactly what NHTSA
16 believes is being reflected in the data. This is like we are
17 already up to speed. This is not a case where discovery is
18 needed in aid of the initial prosecution of the case. There
19 are some. There are some where a lawsuit gets filed against a
20 John Doe, basically, saying we want to shut down Internet
21 abuse, but we don't know who is running this site, we need
22 discovery just to prosecute the case. This is at the opposite
23 extreme of that.

24 This is a case where there has been tremendous news
25 coverage, tremendous interest in light of the public issue of

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1 concern. What that means is that if there is no preliminary
2 injunction motion now. It's probably, indeed undoubtedly
3 because the plaintiffs who are extremely ably represented here
4 and everybody knows that. Very, very excellent lawyers and
5 law firms, they don't believe that the prosecution of a motion
6 for a preliminary injunction is warranted at this time where
7 it would be a wise thing to do and for the Court to take up
8 its time with it, at this point in time. And that is the
9 third point of agreement which is -- today, even with all of
10 this information, having a preliminary injunction motion is
11 something that does not make practical sense.

12 THE COURT: Now, those three issues would not be
13 matters that the MDL panel would probably be concerned with
14 because they deal with the sufficiency of the pleadings, the
15 need for emergency relief, and these other things. The MDL
16 panel will be looking at whether or not there is some sort of
17 consistency between the overall contention, which you quite
18 correctly said, there is no disagreement on about the fact
19 that this is a diminution of value case. This is not a
20 personal injury case, although there is some language in there
21 that might concern you later on. But you deal with that if
22 the case is here or wherever it is sent by the MDL panel, and
23 that will get straightened out.

24 So my point is that we are here today to inquire as
25 to whether or not there should be a stay of this case, this

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1 one single case, or I may have two. There are 11 or 12 or 14
2 or so -- 14, I think, in the Southern District of Florida, but
3 right now I only have -- I'm only involved with one or two.

4 So the question would be whether we should await
5 some action by the MDL panel, which experience has taught us
6 usually is forthcoming in three to four months, five months;
7 and secondly, is there any reason we should not do that.
8 That's sort of a traditional way of looking at it. And so
9 your argument is quite simple, Judge, I think -- I don't want
10 to put words in your mouth, but, Judge, let's do what we
11 always do in these things.

12 Now, if I was handling my first MDL case, and I'm
13 not. You are thinking of the bank case, but I had four of
14 these over the years. My first was in 1972, so I'm familiar
15 with the MDL. If you were with a brand new federal judge who
16 had never heard of the MDL panel, then I'm sure what you are
17 saying would be very, very helpful. And while it's
18 entertaining to me -- and I'm enjoying hearing your good loud
19 voice, I compliment you on that -- you are well organized.
20 But really, what we are talking about is should we follow a
21 traditional panel or not.

22 The other side suggests, oh, no, Judge, we need to
23 go forward, but you are anticipating their argument. They
24 haven't made it yet, and I don't know how far they're going to
25 go before arbitrary old judges will cut them off at the knees,

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1 and it will be a short hearing.

2 All I'm suggesting is you may want to wait and see
3 what your objection is because, right now, it looks to me --
4 I'm not telegraphing, I'm not prejudging, but it's pretty
5 standard from what you have alluded to.

6 MR. BERNICK: Yes, yes.

7 THE COURT: It's a national of filings, and you have
8 named a bunch of states. It seems like it's ready made for
9 consideration by the judicial panel --

10 MR. BERNICK: Yes.

11 THE COURT: -- on multidistrict litigation. Now
12 what they will do with it or whatever is totally up to them.
13 We all will respect it, whatever it is -- certainly I will,
14 and I know you guys don't dare not to. Even I will
15 respect it. I'm joking a little bit. You are not smiling.
16 You are saying, what's this guy talking about.

17 All I'm saying is whatever they decide is what we
18 are all going to do. And experience has taught me that this
19 is probably going to be one that they take jurisdiction
20 over --

21 MR. BERNICK: Yes.

22 THE COURT: -- and review their -- go through their
23 process of determining where it should be sent, and then send
24 it out. And I'll be very interested to see what novel,
25 innovative argument Mr. Prieto or his colleagues come up with.

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1 They have been coming before me two or three times a month for
2 the last five years, so I'm -- I can tell you they come up
3 with interesting, innovative things. You people come up with
4 interesting. It's real good hearings, real nice, but I don't
5 know what he's going to say today that is going to persuade me
6 that I should rule against you, so unless you've got something
7 further why, you might want to quit or you can keep talking.

8 Judge Scott keeps talking sometimes, and then I'll
9 remind him that you are trying to persuade me to change my
10 ruling. At that point, he always is very respectful: No,
11 Judge, I don't want you to.

12 I don't mean to cut you off, but isn't that about
13 where we are today?

14 MR. BERNICK: I think so. And I would agree with
15 that, and I would only make the observation because I know now
16 that my words are -- every word tends to discount the strong
17 guidance and sound guidance that you gave me, but what would I
18 would say is that yes.

19 And for the Court's information, there is no
20 opposition to the MDL, and these plaintiffs support the MDL
21 indeed. They have moved for it. The MDL is scheduled to
22 probably hear this matter at the end of January, probably
23 decide in February, so we have 60 days.

24 And the only other thing that I would add by way of
25 framing what I know will be their argument is this, that I

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1 don't believe we have moved for a general stay of the case.
2 We have not seen any effort on their part to advance the
3 motion practice. They have agreed not to do that. We don't
4 see any effort on their part to advance general discovery. We
5 don't see that. So what we are talking about is expedited
6 discovery, and that's their -- that's their motion. And I
7 would think that --

8 THE COURT: Well, I wouldn't touch that until the
9 MDL tells me to do it, would I? And then you better buckle up
10 your seat belts, if I get that. So you know where you are
11 headed. You will be on a fast track then, if it comes here.
12 I don't know that it will.

13 MR. BERNICK: Right.

14 THE COURT: I have a general viewpoint about how the
15 MDL panel looks at these things, having been very close
16 friends with several of them that were chairman of that panel
17 over the years and having been involved with, so I have no
18 idea whether it will come here or not. I don't know. I can
19 hazard a guess based upon my experience and knowledge, but
20 there is no point in that.

21 Why don't we let you just sit down for a minute, and
22 let's see -- I will give you very liberal response time to
23 whatever they come up with, if there is something that you
24 would have loved to have told me about in advance. I will
25 hear from you.

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1 MR. BERNICK: Thank you.

2 THE COURT: Thank you. Anybody else who would like
3 to talk on this matter before we hear from Mr. Prieto?
4 Anything you want, I don't want to discourage anybody on this.
5 This is an important case.

6 UNIDENTIFIED SPEAKER: I think on behalf of the
7 automakers, and I think I'm speaking for them, we will take
8 the Court's comments at value and keep our mouths shut.

9 THE COURT: Thank you.

10 Mr. Prieto.

11 MR. PRIETO: May it please the Court; good
12 afternoon, Your Honor.

13 Your Honor, we have been very careful and very
14 reasonable in what we have asked of this Court and of the
15 defendants, and the reason is that we are trying to balance
16 the interest of our clients and protecting our clients and, at
17 the same time, not doing anything for this Court or any action
18 that we take to interfere with either the JPML or NHTSA. So
19 we have fashioned our request of Your Honor to be very narrow
20 and very limited.

21 As to the stay, we, in fact, have agreed with the
22 defendants. Look, you can wait until the JPML acts to respond
23 to our complaint because it makes sense. Because at some
24 point, they're -- we are going to file. At some point in some
25 court, maybe this court, we are going to file a consolidated

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1 complaint. The current one is going to be amended. So we
2 said we have no problem on agreeing with you to defer it. You
3 know, you responded to the complaint because there is going to
4 be a consolidated complaint down the road.

5 What we oppose, Your Honor, is a screeching halt,
6 complete stay of this case, which is the first case filed
7 against Takata and the automakers around the country. This is
8 ground zero. This is the first case filed around the country.
9 So we have opposed a general stay but have agreed with the
10 defendants on certain issues. And the reason that we oppose
11 the general stay is, number one, the JPML doesn't require it.

12 Mr. Bernick, in his very loud voice, made a very
13 good argument, but he forgot to mention one thing, and that's
14 the JPML rule. And the JPML rule says as follows, the
15 applicable rule, and I quote: "Pendency of a motion before
16 the panel does not affect or suspend orders and pretrial
17 proceedings in any pending federal district court action and
18 does not limit the pretrial jurisdiction of that court."
19 That's what the JPML says to district courts and counsel when
20 these kinds of motions are heard. That's number one.

21 The manual for complex litigation basically says the
22 same thing, you don't have to halt proceedings in the district
23 court as long as the proceedings in the district court do not
24 impact or affect the JPML. And our limited requests for
25 narrow, limited discovery here would in no way impact either

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1 the JPML proceedings or any subsequent court, including this
2 one who may get the MDL.

3 So it's a very narrow request, and we are saying,
4 Judge, don't put a screeching halt to everything. We will
5 cooperate with the defendants to make sure that this moves at
6 a reasonable pace in light of the MDL.

7 You noted that their position is that this is
8 traditionally done. This is the way things are done. It's
9 really not. The courts are divided depending on what the
10 nature of the request made in the district court is. If it's
11 not going to impact the JPML, district courts permit the
12 proceedings to go forward. This case is a perfect example,
13 Your Honor.

14 We are asking for very limited discovery. We are
15 asking simply for a copy of what they have provided or will
16 provide to NHTSA or Congress. In today's world, that means
17 that all they have to do is push a computer, and they give us
18 a copy of one of these disks. That's all we are asking for, a
19 copy of what they have already produced or will be produced to
20 Congress or NHTSA. That is not burdensome. And that's why we
21 believe that a general stay in this case is just simply not
22 appropriate.

23 They cite to the case that you granted a stay, the
24 case of *Julian*, and that case is completely different. That
25 was a single plaintiff case. The MDL had already been

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1 created. It was the Vioxx MDL before Judge Fallon in
2 Louisiana; and more importantly, the drug there --
3 pharmaceutical drug there that was the subject of that
4 litigation had already been taken off the market by the
5 defendant.

6 Here, that is not the case. An MDL has not been
7 created. Number two, the airbags, some have been taken off
8 the market when somebody shows up to replace them; but, Your
9 Honor, they're attempting to produce replacement airbags at
10 the level of 450,000 a month, and that's not going to cut it.
11 So the defective product here is still on the market and ready
12 to cause damage whenever it causes damage. And we have cited
13 in -- Your Honor, in our papers, the many instances of
14 personal injuries that these bags have caused.

15 THE COURT: Yes, but I'm only dealing with Mr. Dunn,
16 I believe, and somebody named Mr. Koehler, and we are only
17 dealing with a few cases here, whereas the discovery in an MDL
18 would go forward in a massive number, and it would control the
19 action. It could be organized in a sensible way to get all of
20 the cases, hopefully, concluded like our bank case,
21 four-and-a-half years, that's pretty good; millions and
22 millions and millions of people; \$2,274,000,000 in
23 settlements; four-and-a-half years, that's not bad. That's
24 pretty good.

25 So MDL can function -- the class actions in MDL can

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1 really function well, and we are talking about -- Mr. Bernick
2 mentioned the date, and maybe I misunderstood him, but some
3 date that the MDL panel meets in January, well, that's only a
4 month away. What's the harm? What's the harm in getting
5 something consolidated where you are -- in the Southern
6 District of Florida, at least you would be dealing with 14 or
7 18 cases, whatever it may -- today, it may be up to more than
8 that. But you have got a consolidated basis instead of them
9 having to print 2,000 or 20,000 or 200,000 disks and mail them
10 out to judges around the country that are ordering the lawyers
11 to do this and that and the other thing. Wouldn't it be
12 better to have it consolidated and to where it can be done in
13 a month, two months?

14 MR. PRIETO: Your Honor, I think that granting the
15 limited discovery that we have asked for here will actually
16 speed up the process, and the reason is as follows: We are
17 not going to obtain this very limited discovery and keep it to
18 ourselves. In fact, in some of the stays that they have
19 negotiated around the country, they have put in a provision in
20 the stay that says, if Judge King requires us to produce
21 records in South Florida, you are to give us those records.
22 Those stays have been negotiated by them with respect to some
23 counsel but maybe not all counsel. So that's number one.

24 The second point that I would ask -- that I would
25 make is that if we get this very limited set of discovery that

1 they have already produced, Your Honor, or about to produce to
2 Congress and NHTSA, we can actually speed up the process once
3 an MDL court is in place because we will have that discovery
4 and we can tailor or discovery plan and our request to speed
5 up the process once that MDL is created. So the discovery
6 that we are asking for here will actually benefit a future
7 Court, whether it's this Court. And we have asked and
8 recommended to the panel that it be some judges in the
9 Southern District of Florida that have MDL experience such as
10 yourself, so whether it's you or whether it's another Court,
11 actually producing this very limited set of discovery, Your
12 Honor, that they have already produced, a simple copy to us is
13 actually going to benefit, in the long-term, an MDL court in
14 speeding up the process. Because what's going to happen is as
15 follows. There is going to be a hearing on January 29th. The
16 JPML, believe it or not, Judge, coincidentally, is meeting in
17 Miami on January 29th. They probably usually issue orders
18 within two to three weeks. We think that's what will happen
19 here within the first two weeks of February. Then whoever
20 gets this case, all of the actions are going to come into the
21 court, and then the first thing that's going to happen is
22 leadership. The Court has to appoint leadership. And then
23 there is going to be back and forth about this whole process
24 of discovery. So it may be April, May, or June before the
25 plaintiffs actually start demanding discovery of the

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1 defendants. So we are talking about six, seven months before
2 the case -- the MDL court actually starts moving forward.

3 So when they tell you just wait until January 29th,
4 nothing is happening on January 29th except that the JPML will
5 hear where the cases will be transferred. It's going to be
6 another three, four, or five months before the plaintiffs'
7 leadership group after that MDL is formed.

8 THE COURT: What happens that slows it down after
9 they have their hearing? Don't they usually come forth with a
10 designation of a particular or specific court or specific
11 division of Southern District New York, California, Florida,
12 whatever? Don't they do that pretty quickly, two, three
13 weeks?

14 MR. PRIETO: Yes, Your Honor.

15 THE COURT: All right. From then on, it's up to the
16 receiving court. What -- you skipped over that. Then it
17 became six, eight months down the road. Is that because the
18 court that it's assigned to sits around trying to read the
19 rules and figure out what to do, or what is it?

20 MR. PRIETO: Your Honor, as Your Honor knows from
21 experience, some courts are a lot quicker than others. Some
22 courts are a lot quicker.

23 THE COURT: Yeah, but you skipped over another part
24 too, and that is the pleading practice. You see, you have
25 your complaint. You have talked about an amended consolidated

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1 complaint. Fine, that will probably happen, probably. I
2 mean, as far as the Court has to approve, probably you get
3 that; and then they get answers -- well, first of all, they
4 get to test. And you know, that's -- testing those pleadings,
5 that all comes pretty much before discovery. Now, there is
6 where your holdup is going to be because you need a court --
7 you need consideration of those motions probably, and the
8 briefing and oral argument on those motions can be very
9 substantial on whether or not it is a class action, the common
10 denominators, commonality, all of that sort of thing. Now,
11 that's where the holdup is.

12 So it seems to me that the discovery, until you get
13 the pleading really solidified and you know exactly what
14 complaint, exactly what answer, what the issues are, you know,
15 you're -- that's where the holdup is. And starting that, at
16 this point before a court is even selected -- I don't mean to
17 be quarreling with you. I hope I'm not perceived that way. I
18 should let you do the talking, but it just seems to me that
19 there's about where we are and that -- you've got to go
20 through that discovery phase, and that will take time for all
21 of these people.

22 Now -- well, I've got -- I'll have to ask
23 Mr. Bernick about that, but in the bank case, we had 31 major
24 banks, and each bank had 2-, 300 sub banks and all that, so it
25 was a different problem.

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1 Here we have -- you all are going to have to educate
2 me on this, but here we have a manufacturer of a unit that
3 deals with airbags. We have car manufacturers. In terms of
4 defendants, about how many roughly? Approximately, how many
5 defendants do we have?

6 MR. PRIETO: Roughly, I would say between six and
7 eight defendants currently, Your Honor.

8 THE COURT: Okay. Six or eight currently. That's a
9 lot different than the 31 banks, all of whom had 10 to 15
10 lawyers for each bank that came here; great lawyers, and they
11 all wanted to talk. And you guys couldn't let that happen
12 without talking back, so that's slowed things down.

13 Here, six or eight can -- well, I'm rambling.

14 All right. You are suggesting that you would get a
15 running start because they could give you these -- this
16 information they have already furnished, according to your
17 briefs, to the -- either the Congress or the national agency
18 that governs these matters. But getting it ahead of time
19 before you have the pleadings solidified, what are you going
20 to do with it? Why do you need that running start?

21 MR. PRIETO: The reason we need that running start
22 are twofold, Your Honor. There is a public safety issue here,
23 as Your Honor knows. It is a significant public safety issue.

24 THE COURT: For devaluation?

25 MR. PRIETO: No, I mean -- let me address that

1 issue. They say this is a diminution in value case, not a
2 personal injury case. Well, we have asked for injunctive
3 relief; and the fact that we are representing clients in a
4 class action for diminution in value does not mean that we
5 cannot protect our clients from future injury, and we have
6 asked for that injunctive relief in our complaint.

7 THE COURT: I understand.

8 MR. PRIETO: So there is a significant personal
9 safety issue here; and that's why we need the documents now,
10 not because we will absolutely file a preliminary injunction
11 for injunctive relief, but we at least need to protect our
12 clients to see what the documents indicate to see if there are
13 any further steps that we can take to protect our clients.

14 One more point that I would like to make to Your
15 Honor is this whole issue that there is no preliminary
16 injunction filed in this case. Mr. Bernick says, oh, there is
17 a wealth of evidence out there and information. Your Honor,
18 Your Honor knows better than anyone in this courtroom, when
19 you move for a preliminary injunction, you better have
20 evidence that's admissible.

21 Right now, what we have got are statements to
22 Congress, our congressional statements, our self-serving
23 statements by the defendants to Congress, and newspaper
24 stories. If we were to come to Your Honor with a preliminary
25 injunction based on that evidence, Mr. Bernick would tell you,

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1 Your Honor, these are newspaper stories. They've got not one
2 shred of evidence that -- for a preliminary injunction.
3 That's what they would say, if we came in here with the
4 existing evidence publicly known right now. And all we are
5 simply asking is give us a small limited core of records to
6 see whether we can do something else to protect our clients
7 before the JPML acts. We are not saying we are going to do
8 it. We are not saying we are going to file it, just give us
9 the opportunity to look at what the evidence shows.

10 This core group of records, Your Honor, is going to
11 be relevant to every single case out in the country because
12 what they're producing to NHTSA and Congress goes to the core
13 of the defect which is going to determine whether -- you know,
14 the value, whether there is a defect, whether they knew of the
15 defect and did not disclose it.

16 According to a couple of their former employees,
17 they were conducting secret testing on these airbags during
18 the weekends and after hours. And you know what they did with
19 the results of that testing according to two former employees?
20 They destroyed it. So there is another reason why we need to
21 see what they produced to Congress and NHTSA, and it's -- Your
22 Honor, it is limited. It is narrow. It is simply them
23 burning one copy for us. And if they give us one copy, we are
24 not going to put it in a vault, and we are not going to share
25 it with other plaintiff's lawyers. We are going to produce

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1 it. In fact, they have to produce it, based on the agreements
2 that they have with other plaintiff's counsel. They have to
3 produce whatever Your Honor deems it appropriate for them to
4 produce in this case.

5 Again, our request for a stay is don't put this case
6 into a screeching halt. Let's work slowly, and we will work
7 in conjunction with the JPML. And, again, the relief that we
8 are asking -- I'm going beyond the motion for a stay -- is
9 very narrow.

10 One thing that they make an argument in their
11 pleadings, Your Honor, is that we are the only group of
12 lawyers who have not agreed to stay our case, and the reason
13 for that is simple. We were the first case that was filed in
14 the country against Takata. People are relying on us to
15 vindicate the rights of other plaintiffs, so that's why we did
16 not agree to a stay. We were the first case in the country to
17 be filed; and within days of us filing our motion for
18 expedited discovery, Your Honor -- as Your Honor usually does
19 -- set it for a hearing. That's why we are here, because Your
20 Honor moved faster and quicker than most of the other judges
21 and because we were the first case that was filed in the
22 country against Takata and the automakers. So the fact that
23 other people have agreed to a stay means absolutely nothing.
24 It simply means that they're relying on us to see -- and
25 looking to see what happens in this courtroom.

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1 Again, we are asking for a very limited relief.
2 It's not going to impact the JPML. It's not going to impact
3 anybody else, including NHTSA; and we are simply saying, let
4 us go, give us what they have given to Congress and NHTSA --
5 very limited relief, very limited set of documents -- and
6 let's see what happens from there.

7 We are not saying we are going to file a motion for
8 preliminary injunction. We are saying, let us look to see
9 whether we need to protect our clients further. That's all we
10 ask from this Court. We would never ask this Court ever to
11 put itself in a position where it interferes with NHTSA or the
12 JPML.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 All right. Mr. Bernick, fine, and now we know
16 precisely what it is they're relying on, and so I would like
17 to hear from you, your response.

18 MR. BERNICK: Thank you very much, Your Honor.

19 I just have a couple points to make really, and I
20 think the threshold matter is that, again, Mr. Prieto has been
21 very candid of the real purpose of this request, which is to
22 get the head start. I think Your Honor said a running start
23 on the discovery process.

24 THE COURT: It was his words first. I don't want to
25 take authorship for his argument this early in the game one

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1 way or the other.

2 MR. BERNICK: My apologies to Mr. Prieto.

3 THE COURT: It sounds like a good way to describe
4 what he is asking for.

5 MR. BERNICK: Yes, that's correct.

6 And that is -- that is a very candid statement, and
7 it is very consistent with the nature of the request. The
8 request is not geared towards anything in particular. It
9 simply says, give us what you are giving to the government.
10 And that might be a reasonable request as a first discovery
11 request in the MDL, but it is not something as to which there
12 is some compelling need at this point in time. If that were
13 true, if that were an adequate rational to proceed with
14 expedited discovery before the MDL panel made its
15 determination, the same rational would exist in absolutely
16 every case where documents have been produced to the
17 government.

18 It would always be the desire to say and always the
19 rational to say, well, let's just get these so we can work on
20 something, and that -- that is very much inconsistent with the
21 rule that's announced by the JPML, which is that proceedings
22 in the case should await its decision. It's not a deprivation
23 of the court's jurisdiction, the district court's
24 jurisdiction, it's prudential guidance that says the whole
25 purpose of coordination is to coordinate.

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1 Here, no matter what is the position of all of these
2 other plaintiffs all over the country, one thing is for sure,
3 which is as soon as this process starts here, they will all
4 have an extremely active interest in it, and we will have
5 coordination problems.

6 So the rational that says let's get the running
7 start is not a rational that is consistent with the MDL
8 process at all; otherwise, we would see people using it all of
9 the time. It is the exceptional case where discovery proceeds
10 in advance of a decision by the panel.

11 It is also interesting that, again, Mr. Prieto
12 describes that there will be a period of time in the MDL while
13 lead counsel is chosen to liken the discovery process won't
14 start until later on. That says very logically that that is
15 exactly the slot of time where if there is a request to now
16 get this collection of government documents and make them
17 available because they're already defined, that request,
18 again, could be made of the MDL judge, and the MDL judge can
19 determine what to do about it, and other counsel can determine
20 whether they agree.

21 The second point is that there is still a reference
22 that's been made to public safety. And, again, there is no
23 denying that there is a public safety issue. What is notable
24 here though is that there really isn't an articulation. There
25 is no commitment to what specifically they're going to add to

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1 the process, much less a metric for what discovery is required
2 for that. The idea that we are entitled to protect our
3 clients is unassailable. But again, that is not the kind of
4 request, that is not the kind of petition that's been
5 recognized in the cases or that would be appropriately
6 recognized in the cases. Everybody always wants to protect
7 their clients and serve their clients' interests. The
8 question is whether from a judicial point of view there is
9 something extraordinary that warrants taking that action in
10 advance of the JPML.

11 The only other things I would say is that it's true
12 that others may be relying upon the very able lawyers here.
13 But one thing is for sure, they are all in this process of
14 trying to play a role in this litigation, and not everybody
15 agrees that this litigation should be -- the lead lawyer
16 should be sitting here in this courtroom even though they may
17 well be right. The panel will decide that.

18 There are lots of different lawyers all over the
19 country. I tried to talk to all of the lead lawyers
20 personally when the lawsuits were filed because I know many of
21 them from other dealings. There are many, many different
22 views out there about exactly who should be, from the lawyer's
23 point of view, running the case and how.

24 If Your Honor has any interest in hearing how it's
25 not so easy, it is certainly easy to make a copy of that disk.

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1 No question about it. The question is: What is involved in
2 working with those documents?

3 There are objections to the requests that have been
4 made by NHTSA. There are confidential documents that are
5 going to be produced. There is confidential information
6 that's already been produced to NHTSA. We are going to have
7 to work out all of the specifics of what is actually relevant
8 to the claims here. We are going to have to have protective
9 orders that will require the agreement not only of counsel who
10 are present here, but whoever is counsel in the MDL. This is
11 a very, very difficult process. And I'll say, on the human
12 side of it, there are people who working flat out to comply
13 with the request for NHTSA for documents. This is an
14 unbelievably massive expedited undertaking under penalties,
15 and they can only obey one set of bosses. We don't need
16 another set of folks who are saying lets negotiate as well.

17 That's all I have to say, Your Honor.

18 THE COURT: Thank you.

19 Counsel? Yes, Mr. Krigbaum.

20 UNIDENTIFIED SPEAKER: No, Mr. Mattson.

21 MR. MALLOW: Good afternoon, Your Honor. My name is
22 Michael Mallow. I represent American Honda Motor Company.

23 THE COURT: I'm sorry, sir, about the name. I was
24 looking at --

25 MR. MALLOW: I have been called much worse.

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1 THE COURT: I had you misplaced, Mr. Mallow.

2 MR. MALLOW: Knowing Mr. Mattson, I have been called
3 much worse.

4 Your Honor, just some very, very brief points.

5 We have heard a lot about the notion of limited
6 discovery; and to be true, the plaintiffs have really made one
7 request which is just give us what you are giving to
8 governmental agencies and to NHTSA.

9 But that one request essentially is asking for
10 production of the entire universe of documents related to the
11 Takata airbag issue because one would need to look at the
12 requests that have been made by NHTSA to see how broad and how
13 deep those requests are. So essentially, what the plaintiffs,
14 when they say we just want what you give the government, the
15 plaintiffs are saying to you, we want the defendants to
16 produce the entire universe of documents that relate to this
17 issue.

18 Importantly also, Your Honor had focused on who are
19 the defendants in this case; and at the risk of telling Your
20 Honor something you already know, there are many defendants
21 that are missing from this particular litigation.

22 THE COURT: That's why I'm here, that's why I'm
23 listening to you. I want to hear what I don't know.

24 MR. MALLOW: There are many defendants who are not
25 in the Dunn litigation, who are not represented in this

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1 courtroom, who have not been sued in this particular case, who
2 can be very impacted by an expedited discovery.

3 THE COURT: Factually, just give me an example.

4 MR. MALLOW: For example, Subaru is a defendant in
5 cases. Nissan is a defendant in cases. Neither one of those,
6 to my recollection, are in this case.

7 THE COURT: Different car companies.

8 MR. MALLOW: Correct. There are foreign
9 manufacturers who have not been served in this case yet. So
10 there are other defendants outside of this courtroom who can
11 be impacted by the decisions made in this courtroom and
12 have -- in all fairness, have the right to await the MDL
13 process so everything is coordinated and put together.

14 So the last point I would make, Your Honor, we heard
15 a lot of discussion about the interest of plaintiff's clients,
16 and I have no doubt that the plaintiff's counsel are very
17 concerned about the interest of their clients, but I went back
18 and I looked at the plaintiff's complaint. And there are 595
19 paragraphs over 122 pages, but there is not a single
20 allegation in that complaint that suggests that any of the
21 named plaintiffs have been deprived of anything. There is no
22 allegation that a plaintiff requested a replacement inflater
23 and that request was denied.

24 There is no allegation that a plaintiff requested
25 alternative transportation because they were concerned about

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1 driving their vehicle and that request was denied.

2 There is no allegation that the plaintiffs are
3 out-of-pocket, other than a diminution of value of their
4 vehicle and/or potentially they have not received the benefit
5 of their bargain. And those are economic injuries, and those
6 economic injuries have been recognized. But the complaint, as
7 it is currently alleged, those requests -- those allegations
8 that the plaintiffs have been denied relief that they have
9 requested is not in the complaint.

10 THE COURT: Thank you; thank you, Mr. Mallow.

11 Counsel, I'm sorry. I could address you
12 individually, but I don't know you yet.

13 Who else would like to?

14 MR. MATTSON: I'm Eric Mattson also on behalf of
15 American Honda.

16 THE COURT: Mr. Mattson, please use the microphone
17 there. Thank you.

18 MR. MATTSON: Eric Mattson on behalf of American
19 Honda. Mr. Mallow, I think, has spoken on behalf of the
20 automaker defendants.

21 THE COURT: Go ahead. Anybody else? That was
22 replying to the same.

23 For good or bad, one way or the other, you
24 have encountered in this hearing this afternoon a judge that
25 is great supporter of and great believer in the principles of

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1 the original idea of a multidistrict litigation panel and has
2 observed it and been involved with it over the years, and I'm
3 a great supporter of what that -- the good that panel has done
4 and the process by which they operate that has made it
5 possible for persons to have a hearing and to bring their
6 controversy to court and get a very reasonable and expedited
7 decision on there. So I'm a great supporter of what the court
8 does and, for that reason, a great believer in the whole
9 concept. Chief Justice Berger was one of the major ones.

10 In any event, for a lot of reasons, in my own
11 experience with handling or being involved with MDL cases, I
12 think that what I've referred to as a traditional process of
13 going forward, and that may be my own perception alone of what
14 that process was or is a difference between you as to what
15 that really is and what the rule really means. But I think
16 that the idea that they should make a considerate and
17 carefully reasonably -- they've got great judges on the court.
18 Judge Hodges, one of my dearest friends, just went off of
19 being chairman of that court for five, six, seven years.

20 In any event, I think that they should be able to go
21 forward and do -- consider this and make a determination and a
22 decision about which court is appropriate to handle this very
23 substantial and, obviously, very important litigation.

24 I think the motion -- the Defense motion -- let me
25 refer to it as Mr. Bernick's motion, if I may. You know what

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1 I'm talking about. I think that motion should be granted. I
2 do hereby grant it for a stay, for a stay of -- until action
3 by the panel.

4 If, for any reason, for any reason something gets --
5 what I'm trying to say is that you all can always come back to
6 me in my case, and this case is here in the Southern District,
7 if there is something developing somewhere along the line, I
8 can't really think of anything except possibly some action by
9 Congress that might interfere with the normal processes of the
10 MDL panel and delay it for some reason.

11 So this may not be the final word on this, but for
12 the next -- for the ensuing months, whatever few months or
13 whatever it is, it is -- the motion is granted for a stay
14 and -- and I will -- oh, it is limited to what was requested
15 in this motion. Counsel, you all understand. So the stay is
16 a temporary stay.

17 The motion for expedited discovery is denied without
18 prejudice. That's the best way to handle, denied without
19 prejudice to renew, if there should be some untoward delay
20 that we can't see at this point.

21 And if you would be so kind, Mr. Bernick, to draft
22 an order for my signature. Of course, follow the usual
23 procedure. Give it to everybody, submit it to me in a few
24 days or something, or whatever is convenient for you.

25 Where is your office, Mr. Bernick? Are you locally

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1 or from out of town?

2 MR. BERNICK: I'm in New York. I still have a place
3 in Chicago. I'm a Chicago boy, but I'm practicing now in New
4 York. And Mr. Krigbaum at the Carlton Fields firm here, in
5 town, is -- I have worked with him for many years.

6 THE COURT: That's fine. It was more just interest
7 than anything else.

8 But you've got to fly back to New York and dictate
9 something or whatever, or you can probably handle it however
10 you want to, but if you can get that over to me in a day or
11 two, or send it through to me, I would appreciate it, and show
12 it, of course, to Counsel, but we will get an order out on
13 this in a day or two.

14 MR. BERNICK: Thank you.

15 THE COURT: Thank you, gentlemen, Counsel; ladies
16 and gentlemen, Counsel, whatever I should say the right way.
17 That's Miss Reese, can keep me on track. I'm just an old
18 judge here, I slop around with that language sometimes, but I
19 never mean to. I try to get it right.

20 All right. Thank you very much.

21 (PROCEEDINGS ADJOURNED AT 2:56 P.M.)

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C-E-R-T-I-F-I-C-A-T-E

I hereby certify that the foregoing is
an accurate transcription and proceedings in the
above-entitled matter.

12/11/2014

DATE

/s/DIANE MILLER

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